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Supreme Court of the United States
OCTOBER TERM, 1942

No. 498

GALBAN LOBO COMPANY, S. A.

Petitioner,

vs.

LEON HENDERSON, Price Administrator,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES EMERGENCY COURT OF AP-
PEALS AND BRIEF IN SUPPORT THEREOF.**

**DONALD MARKS,
JULIUS B. BAE?,
ELI D. GOLDSMITH,**
Counsel for Petitioner.

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Supreme Court of the United States
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No.

GALBAN LOBO COMPANY, S. A.

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vs.

LEON HENDERSON, Price Administrator,

Respondent.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES EMERGENCY COURT OF APPEALS**

*To the Honorable Harlan Fiske Stone, Chief Justice of the
United States, and to the Associate Justices of the Su-
preme Court of the United States:*

The above named petitioner, by the undersigned, its attorneys, respectfully prays that a Writ of Certiorari to the United States Emergency Court of Appeals may issue to review the judgment of that Court made upon the 30th day of September, 1942, in the above mentioned cause.

Statement of Proceedings in Court Below.

This cause arose under the provisions of Sections 203 and 204 of The Emergency Price Control Act of 1942 (Public Law No. 421, 77th Congress, Second Session, approved January 30, 1942). Petitioner, on March 2, 1942, filed with the Office of Price Administration a petition for exception to Price Schedule No. 16, as amended, pursuant to Section 203(a) of the Emergency Price Control Act (Tr. 1-13). On May 12, 1942, the Price Administrator issued an order

dismissing said petition upon jurisdictional grounds (Tr. 16, 17).

Petitioner thereafter filed its complaint against the Price Administrator in the United States Emergency Court of Appeals protesting said order of dismissal (Tr. 1-15). On September 30, 1942, the United States Emergency Court of Appeals rendered its decision dismissing petitioner's complaint upon the ground that the provisions of the Emergency Price Control Act of 1942 relating to protest and review are not available to a person whose complaint is based upon a transaction completed prior to the time the Act became law. The Court held that questions arising under the Price Schedules issued under the authority of Executive Order prior to the enactment of the Price Control Act are not subject to the protest and review procedure provided by the Act.

Statement of Opinion Below.

The opinion of the United States Emergency Court of Appeals is not yet officially reported. A copy thereof is set forth at length in the Record.

Jurisdiction.

The judgment of the United States Emergency Court of Appeals was entered on September 30, 1942. The jurisdiction of this Court is invoked under Section 204(d) of the Emergency Price Control Act of 1942.

Summary Statement of Matter Involved.

On October 27, 1941, petitioner entered into a contract with Imperial Sugar Company, of Sugar Land, Texas, for the sale of 4,000 tons of Cuban raw sugar (Tr. 11-13). Said contract was amended on December 8, 1941 to provide that

the seller should have the "option of calling the price on any one day on or before January 31, 1942 at the Cuban equivalent of the ceiling price established by the O.P.A. on the date of call" (Tr. 14). It was also provided in the December 8th amendment that shipment of the sugar should be effected by the seller during December, 1941, instead of "December 1941/January 1942", as previously provided (Tr. 14).

Shipment of the sugar was made by petitioner during the month of December, 1941, as provided, and two vessels carrying an aggregate of 4,000 tons arrived at Galveston, Texas, on December 17, 1941 and January 2, 1942, respectively (Tr. 5).

Price Schedule No. 16 was issued by the Price Administrator on August 13, 1941 (Tr. 18-21). On January 5, 1942, the ceiling price of raw sugar was raised by an amendment of Section 1134.9 of Revised Price Schedule No. 16 from 3.48¢ per lb. duty paid, cost and freight, to 3.73¢ per lb. duty paid, cost and freight, on deliveries made to Gulf ports (Tr. 26, 27).

Petitioner had contracted to purchase the sugar in question in Cuba upon similar terms providing that its seller should have the option of calling the price at any time up to January 31, 1942 (Tr. 4). Petitioner's seller called the price on January 15, 1942, and petitioner was obliged to pay the Cuban equivalent of the then prevailing ceiling price which, computed cost and freight Galveston, Texas, was 2.98¢ per lb., less 1/2 of 1% which was the margin of petitioner's expected profit on the transaction (Tr. 5).

Petitioner then called the price to Imperial Sugar Company on the same basis (as provided in the contract of sale), namely, 2.98¢ per lb. (Tr. 5).

Imperial Sugar Company refused to pay the price as called by petitioner, claiming that under Amendment #3 of

Price Schedule No. 16 petitioner was limited to the maximum price prevailing on the dates of the arrival of the sugar at quarantine, namely, December 17, 1941, and January 2, 1942, both of which dates were prior to the increase in the ceiling price above referred to (Tr. 5). The difference in price thus resulting amounted to 40¢ per cwt., leaving petitioner with a net loss on the 4,000 tons of sugar of \$36,916.41 (Tr. 5, 6).

Petitioner thereupon filed its petition with the Price Administrator setting forth the foregoing facts, pointing out that Imperial Sugar Company was unjustly enriched, and requesting an exception to Price Schedule No. 16 permitting it to demand and permitting Imperial Sugar Company to pay on the basis of the Cuban equivalent of the ceiling price prevailing on January 15, 1942 (Tr. 6, 7).

The order of the Administrator dismissing the petition followed (Tr. 16, 17).

Petitioner thereupon duly filed its complaint with the United States Emergency Court of Appeals, which court has dismissed the complaint for the reason above stated.

Principal Questions Presented.

1. Are the protest and review provisions of the Emergency Price Control Act of 1942 available to a person whose complaint was based upon a transaction completed (except for payment) prior to the time the Act became law?

2. Did the United States Emergency Court of Appeals properly dismiss the complaint in this case?

Statute, Regulations, Order and Schedules Involved.

The pertinent statute and regulations will be found in the Appendix (*infra*, pp. 15-17). The pertinent order and schedules will be found in the Record (Tr. 18-40).

Reasons for Granting Writ of Certiorari.

This case involves an important question of construction of the Emergency Price Control Act of 1942. It is the first case to have been decided by the United States Emergency Court of Appeals; and the question of jurisdiction to apply the remedial provisions of the Act to issues arising under the Price Schedules promulgated prior to the enactment of the law requires a determination of Congressional purpose as expressed in the Act.

I.

The Court below has erroneously construed the Emergency Price Control Act of 1942.

In dismissing the complaint the Court below held that the protest and review provisions of the Act are not applicable to any transaction which occurred under Price Schedules deriving their effect from Executive Order. The Court construed Section 206 of the Act as giving life to Price Schedules theretofore issued, but only from the date when such Price Schedules should become effective by re-printing in the Federal Register. This date became February 11, 1942.

The Court construed Section 206 as limiting the effectiveness of such republished Price Schedules to the period after February 11th. The Court, therefore, reasoned that the provisions for protest and review, being limited to "such Price Schedules", apply only with respect to matters arising under such Price Schedules after February 11th.

The Court observed that if Congress had wanted to provide for the review of issues arising under the old Price Schedules in accordance with the procedure provided in the Act, it would have said so specifically.

The Court said, in passing, that petitioner was not foreclosed from any remedy that was open before the Emergency Price Control Act of 1942 was enacted.

This construction of the law and the reasoning upon which it is based appear to petitioner to be contrary to the intention of Congress as expressed in the Act.

Petitioner's argument in this connection will be found in detail in the accompanying brief.

CONCLUSION.

For the reasons indicated above, as elaborated in the brief annexed hereto, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Emergency Court of Appeals to the end that this cause may be reviewed and be determined by this Court, and that the judgment of the Emergency Court of Appeals may be reversed, and that your petitioner, Galban Lobo Company, S. A., may have such further and other relief as this Court may deem proper in the premises.

Respectfully submitted,

BAER & MARKS

By DONALD MARKS
Attorneys for Petitioner.

Dated, New York, N. Y., October 24, 1942.

Of Counsel:

DONALD MARKS,
JULIUS B. BAER,
ELI D. GOLDSMITH.

STATE OF NEW YORK,
COUNTY OF NEW YORK, ss.:

DONALD MARKS, being duly sworn, deposes and says: That he is a member of the firm of Baer & Marks, maintaining offices at 20 Exchange Place, Borough of Manhattan, City and State of New York; that he is a member of the bar of the Supreme Court of the United States and is an attorney for Galban Lobo Company, S.A., which was the plaintiff in the proceeding before the United States Emergency Court of Appeals in the above entitled matter; that he makes this verification on behalf of Galban Lobo Company, S.A., as petitioner herein; that affiant has read the foregoing petition, was the attorney for said plaintiff Galban Lobo Company, S.A. and has knowledge of this litigation; that the matters stated in said petition are true to the best of his knowledge, information and belief; that the foregoing petition is well founded and entitled to a favorable consideration of this Court and that it is not interposed for the purpose of delay.

DONALD MARKS

Subscribed and sworn to
before me this 26th day
of October, 1942.

[SEAL]

ROSE HOFFMAN

Notary Public, Kings County
Kings Co. Clk's No. 402 Reg. No. 3106
N. Y. Co. Clk's No. 317 Reg. No. 3D214
Commission Expires March 30, 1943

Supreme Court of the United States
OCTOBER TERM, 1942

No.

GALBAN LOBO COMPANY, S. A.

Petitioner,

vs.

LEON HENDERSON, Price Administrator,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
EMERGENCY COURT OF APPEALS**

**BRIEF FOR PETITIONER GALBAN LOBO
COMPANY, S. A.**

Specification of Errors To Be Urged.

It is submitted that the United States Emergency Court of Appeals erred:

1. In holding that the protest and review provisions of the 1942 Act are not applicable to any transaction which occurred under Price Schedules prior to the enactment of the law.
2. In dismissing the complaint for want of jurisdiction.

Chronological Statement.

The chronology, which is pertinent in this case, is as follows:

Price Schedule No. 16 became effective August 14, 1941. The contract between petitioner and Imperial Sugar Company was made October 27, 1941, and was amended December 8, 1941. Delivery of the sugar took place on December 17, 1941 and January 2, 1942. The price ceiling was raised on January 3, 1942. The price was called on January 15, 1942. Amendment No. 3 of Price Schedule No. 16, which was relied upon by Imperial as a bar to payment of the called price was issued on January 26, 1942. The Emergency Price Control Act of 1942 became effective on January 30, 1942. The refusal of Imperial to pay the contract price is dated February 9, 1942, and the petition was filed March 2, 1942.

AUTHORITIES AND ARGUMENT

I.

The language of the Emergency Price Control Act of 1942 expressed the intention of Congress that its remedial provisions should be applicable to transactions arising under the Price Schedules issued prior to the enactment of the law.

In the Act and in Procedural Regulation No. 1 the term "Price Schedule" is used to apply to those schedules which were issued by the Price Administrator prior to the enactment of the law; and the term "price regulation" is used to refer to regulations or other maximum price orders issued after the enactment of the law.

Section 1300.1, subdivisions (d) and (e), respectively, of Procedural Regulation No. 1, define these terms as follows:

"d. The term 'maximum price regulation' means any regulation or order establishing a maximum price or

prices as defined in Section 302(i) of the Act, except that the term shall not include a 'price schedule' or 'temporary maximum price regulation' as defined below."

"e. The term 'price schedule' means any price schedule establishing a maximum price or prices issued by the Administrator of the Office of Price Administration or the Administrator of the Office of Price Administration and Civilian Supply, prior to February 11, 1942, the date upon which the Administrator took office under the Act."

Section 203(a) of the Act, providing for protest, reads as follows:

"Within a period of sixty days after the issuance of any regulation or order under section 2, *or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206*, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. *At any time after the expiration of such sixty days any person subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days.* * * *" (Italics ours.)

Section 206 of the Act reads as follows:

"*Saving Provisions.* Any price schedule establishing a maximum price or maximum prices, issued by the Administrator of the Office of Price Administration

or the Administrator of the Office of Price Administration and Civilian Supply, prior to the date upon which the Administrator provided for by section 201 of this Act takes office, shall, from such date, have the same effect as if issued under section 2 of this Act until such price schedule is superseded by action taken pursuant to such section 2. Such price schedules shall be consistent with the standards contained in section 2 and the limitations contained in section 3 of this Act, and shall be subject to protest and review as provided in section 203 and section 204 of this Act. All such price schedules shall be reprinted in the Federal Register within ten days after the date upon which such Administrator takes office."

Pursuant to the provisions of Section 206, the Administrator provided in Section 1300.44 of Procedural Regulation No. 1, as follows:

"Protest of Price Schedule. (a) Any provision of a price schedule shall be subject to protest within a period of 60 days after February 11, 1942: *Provided, however,* That any protest based solely on grounds arising after the expiration of such 60 days may be filed at any time after the grounds for such protest arise.

(b) A protest to a provision of a price schedule shall be filed, considered, and determined in the same manner as provided for the protest of maximum price regulations by §§1300.9 to 1300.34 inclusive, of this Regulation (§§1300.1 to 1300.56, inclusive)."

The Act and Regulations thus evidence an intent that the Price Schedules after re-publication should be subject to protest within a sixty day period from their effective date, namely, February 11, 1942.

The Court below has construed these provisions as limiting the right to protest to matters arising after February 11th. There is nothing in the Act to support such a limited construction.

Congress, in Section 203(a) of the Act plainly defined two classes of protest: (1) those based upon grounds arising *at any time* prior to the expiration of a period of sixty days following the issuance of any Price Regulation or order, or following the effective date of a Price Schedule, and (2) those based upon grounds arising thereafter.

In respect to the first class of protest, the Court below has said that the time provided for the beginning of the statute of limitations was intended to be limited to grounds for protest arising after February 11, 1942. The language does not warrant such construction and no purpose is to be served by it. There would have been no point to the inclusion of the provision relating to protests in the "saving provisions" of Section 206 if the Congress had intended to limit protests to grounds arising after the Act.

Had Congress intended to leave persons affected by acts of the Administrator under the Price Schedules to their prior existing remedies at law, the detailed provisions of Sections 203(a) and 206, for the saving of the right of protest and review, would have been unnecessary. Simple and logical draftsmanship would have provided for a single class of protest, based only on grounds arising after the effective date of the Price Schedules, to be filed within sixty days after the grounds have arisen.

The observation of the Court below that petitioner's argument involves a "retroactive" application of the law, which is not to be presumed without clear evidence to the contrary, overlooks the fact that petitioner has invoked only the remedial provisions of the law. Retroactive application of such remedial provisions is not unusual and does not require an unqualified expression of legislative intent.

The entire scope and setup of the Act shows that Congress wanted to concentrate in the Emergency Court of Appeals all matters relating to price control, and the review of all orders of the Administrator relating thereto. The action of the Court below seems to be contrary to the Congressional scheme, and therefore should not be sustained.

CONCLUSION.

For the reasons above set forth, the judgment of the Court below was erroneous, and it is therefore respectfully submitted that a writ of certiorari to said Court should be granted herein.

Respectfully submitted,

BAER & MARKS,

Attorneys for Petitioner;

By DONALD MARKS.

Dated: New York, N. Y., October 26, 1942.

DONALD MARKS,

JULIUS B. BAER,

ELI D. GOLDSMITH,

Of Counsel.

APPENDIX

Pertinent Excerpts from Statute and Regulations Involved.

STATUTE:

Emergency Price Control Act of 1942 (Public Law No. 421, 77th Congress, Second Session, approved January 30, 1942) :

“Procedure—Sec. 203. (a) Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any person subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising after the expiration of such sixty days. * * *

“Review—Sec. 204. (a) Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. * * *

“Saving Provisions.—Sec. 206. Any price schedule establishing a maximum price or maximum prices, issued by the Administrator of the Office of Price Administration or the Administrator of the Office of Price Administration and Civilian Supply, prior to the date upon which the Administrator provided for by section 201 of this Act takes office, shall, from such date, have the same effect as if issued under section 2 of this Act until such price schedule is superseded by action taken pursuant to such section 2. Such price schedules shall be consistent with the standards contained in section 2 and the limitations contained in section 3 of this Act, and shall be subject to protest and review as provided in section 203 and section 204 of this Act. All such price schedules shall be reprinted in the Federal Register within ten days after the date upon which such Administrator takes office.”

REGULATIONS:

Procedural Regulation No. 1 (issued pursuant to authority of Section 201(d) and 203(a) of the Emergency Price Control Act of 1942):

*“1300.1. Definitions.—*As used in this Regulation unless the context otherwise requires—

* * * * *

d. The term ‘maximum price regulation’ means any regulation or order establishing a maximum price or prices as defined in Section 302(i) of the Act, except that the term shall not include a ‘price schedule’ or ‘temporary maximum price regulation’ as defined below.

e. The term ‘price schedule’ means any price schedule establishing a maximum price or prices issued by the

Administrator of the Office of Price Administration or the Administrator of the Office of Price Administration and Civilian Supply, prior to February 11, 1942, the date upon which the Administrator took office under the Act.

* * * * *

i. The term 'protestant' means a person subject to any provision of a maximum price regulation or price schedule who files a protest against such provision in accordance with Section 203(a) of the Act."

"1300.42 Effective Date of Price Schedule.—Every price schedule issued by the Administrator of the Office of Price Administration or the Office of Price Administration and Civilian Supply prior to February 11, 1942, shall from such date have the same effect as if issued as a maximum price regulation under section 2 of the Act until such price schedule is superseded or withdrawn."

"1300.44 Protest of Price Schedule.—(a) Any provision of a price schedule shall be subject to protest within a period of 60 days after February 11, 1942: *Provided, however,* That any protest based solely on grounds arising after the expiration of such 60 days may be filed at any time after the grounds for such protest arise.

(b) A protest to a provision of a price schedule shall be filed, considered, and determined in the same manner as is provided for the protest of maximum price regulations by §§1300.9 to 1300.34 inclusive, of this Regulation (§§1300.1 to 1300.56, inclusive)."

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In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 498

GALBAN LOBO Co., S. A., PETITIONER

v.

LEON HENDERSON, PRICE ADMINISTRATOR

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES EMERGENCY COURT OF APPEALS*

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States Emergency Court of Appeals (R. 71-76) is not yet reported.

JURISDICTION

The judgment of the United States Emergency Court of Appeals was entered September 30, 1942 (R. 77). The petition for a writ of certiorari was filed October 28, 1942. Jurisdiction of this Court is invoked under Section 204(d) of the Emergency Price Control Act of 1942, as amended (herein sometimes termed "the Act").

QUESTION PRESENTED

Whether a price schedule issued by the Administrator acting under Executive Order, as applied to purchases and sales completed prior to the effective date of the Emergency Price Control Act, is subject to the procedure for protest and judicial review provided in the Act.

STATUTE INVOLVED

The pertinent provisions of the Emergency Price Control Act of 1942, as amended (Pub. L. 421, 729, 77th Cong., 2d Sess.), appear in the Appendix.

STATEMENT

On August 13, 1941, the Administrator of the Office of Price Administration and Civilian Supply,¹ acting under the authority of Executive Order No. 8734 (6 Fed. Reg. 1917), issued Price Schedule No. 16—Raw Cane Sugars (R. 45-48). This Schedule established 3.48 cents per pound, duty paid cost and freight basis, as the maximum price at Gulf ports for raw cane sugar produced in offshore areas. On October 27, 1941, petitioner entered into a contract with the Imperial Sugar Company for the sale to Imperial of certain Cuban raw sugar (R. 16-18). The contract contained a forward pricing provision authorizing the seller to call the price on any day on or before January 31, 1942, at the Cuban equivalent of the sell-

¹ By Executive Order No. 8875 (6 Fed. Reg. 4483), dated August 28, 1941, the name was changed to the Office of Price Administration.

ing price established by the Office of Price Administration on the date of call (R. 19). Delivery of this sugar to Imperial was completed on January 2, 1942 (R. 10).

On January 3, 1942, Amendment No. 2 to Price Schedule No. 16 was issued, effective January 5, increasing the maximum price for such sugar at Gulf ports from 3.48 cents per pound to 3.73 cents per pound (R. 53-54). On or about January 15, 1942, petitioner called the price on the basis of the Cuban equivalent of 3.73 cents per pound, that is, on the basis of the increased price established by Amendment No. 2 (R. 10). Thereafter, on January 26, 1942, Amendment No. 3 to Price Schedule No. 16 was issued, continuing the maximum price of 3.73 cents per pound established by Amendment No. 2 and, for the first time, authorizing forward pricing by permitting the payment of an adjusted price not to exceed the maximum price in effect at the time of arrival of the sugar at quarantine at the port of destination (R. 55-58). Subsequently, Imperial refused to pay the call price on the ground that it exceeded the maximum price permitted by Price Schedule No. 16 (R. 20-21).

On January 30, 1942, the Emergency Price Control Act of 1942 was enacted. Price Schedule No. 16, in its amended form, was thereafter duly reprinted in the Federal Register as Revised Price Schedule No. 16 (R. 59-67) and, pursuant to Sec-

tion 206, became effective under the Act on February 11, 1942, the date upon which the Price Administrator took office (R. 59).

On March 2, 1942, petitioner filed a protest with the Office of Price Administration objecting to the maximum price established by Price Schedule No. 16 for the sale to Imperial (R. 28-42). The Price Administrator dismissed the protest upon the grounds that it was based upon a transaction which had occurred prior to the effective date of the Act and that it requested relief solely with respect to Price Schedule No. 16 as effective prior to that date (R. 43).

Petitioner thereupon filed a complaint with the United States Emergency Court of Appeals seeking to set aside that order and to have the proceeding remanded for decision on the merits (R. 1-25). The court dismissed the complaint, holding that the protest and review provisions of the Act are not applicable to a transaction completed prior to the effective date of the Act and governed by a price schedule effective only by virtue of Executive Order (R. 71-76).

ARGUMENT

The only reason urged by petitioner for granting the petition for certiorari is that the court below decided an important question of the construction of the Emergency Price Control Act of 1942. In

point of fact, however, the question decided has no significance beyond the particular case.

Section 203 (a) of the Act requires all protests against price schedules to be filed within a period of sixty days after the effective date specified in Section 206, unless based upon grounds arising thereafter. The effective date of all revised price schedules, including Revised Price Schedule No. 16, was February 11, 1942, and the statutory period for protest lapsed on April 12, 1942. Only petitioner has filed a protest under the Act to the application of an Executive Order price schedule to a purchase and sale completed prior to the enactment of the Act. All other persons similarly situated are now barred. Only the petitioner, therefore, is affected by the decision.

Moreover, the decision of the Emergency Court of Appeals is manifestly correct. In view of the integrated character of the statutory provisions, petitioner can prevail only if the Act as a whole be given retroactive effect. No such retroactive effect was provided for or intended.

The criteria for action under the Executive Order were substantially different from those imposed by the Act. During the ten months prior to the passage of the Act, 105 price schedules were issued under authority of the Executive Order. To facilitate the transition from price control under Executive Order to price control under the Act, Congress provided, in Section 206, that these

price schedules should have the same effect from the date upon which the Administrator took office as if issued under Section 2 of the Act. Such price schedules were required to be consistent with the standards of Section 2 and the limitations of Section 3 of the Act and to be reprinted in the Federal Register. On February 17, 1942, the Administrator ordered that 100 of these schedules (including No. 16 as theretofore amended) be reprinted, and in his order stated that they had been reexamined and, where necessary, amended to bring them into conformity with Sections 2 and 3 of the Act (R. 50-60).²

Not only does Section 206 contain no indication that the provisions of the Act were to be given retroactive effect, but the contrary affirmatively appears. Section 206 explicitly provides that any price schedule issued prior to the date upon which the Administrator took office under the Act should "from such date" have the same effect as if issued under the Act. Thus both the governing criteria for schedules under the Act and the effectiveness of the schedules thereunder were brought into operation only prospectively.

The statutory pattern is consistent throughout, embracing procedure as well as substance. Section 206 of the Act provides that "such price schedules" shall be subject to protest and review. Clearly, by

² Five of the schedules were not made effective under the Act and hence were not reprinted in the Federal Register.

"such price schedules" is meant those effective under the Act. Section 204 (d) establishes the exclusive jurisdiction of the Emergency Court of Appeals and of this Court to determine the validity of any price schedule "effective in accordance with the provisions of section 206." Section 4 (a) makes unlawful and hence subject to the civil and criminal sanctions of Section 205, violations of "any price schedule effective in accordance with the provisions of section 206." The retroactive application of the criminal provisions could not have been intended yet the language used in these provisions is identical.

No provision of the Act confers the jurisdiction urged by petitioner to review price schedules as they existed prior to the effective date of the Act, nor is there any evidence in the legislative history that Congress intended to create such jurisdiction by inference. To the contrary, the Act expressly precludes an interpretation which would authorize the Administrator and the court to apply the statutory procedure here and thus to test price schedules issued under the Executive Order by criteria subsequently adopted by the Act. Such an application of the Act could not be inferred even if its language were less explicit. Cf. *United States v. St. Louis, San Francisco & Texas Ry. Co.*, 270 U. S. 1.

CONCLUSION

We submit that the decision below is correct, that the case presents no federal question of general importance, and that the petition should therefore be denied.

CHARLES FAHY,
Solicitor General.

DAVID GINSBURG,
General Counsel,

THOMAS I. EMERSON,
Associate General Counsel,

NATHANIEL L. NATHANSON,
Assistant General Counsel,

BEN W. HEINEMAN,
Chief, Court Review Branch,

HERBERT C. BROOK,

JOHN O. HONNOLD, Jr.,
Attorneys,

Office of Price Administration.

DECEMBER 1942.

APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, as amended (Pub. L. 421, 729, 77th Cong., 2d Sess.)

Sec. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, * * *

Sec. 203 (a). Within a period of sixty days after the issuance of any regulation or order under section 2, or in the case of a price schedule, within a period of sixty days after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. At any time after the expiration of such sixty days any persons subject to any provision of such regulation, order, or price schedule may file such a protest based solely on grounds arising

after the expiration of such sixty days. * * *

Sec. 204(a). Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. * * * Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: * * *

Sec. 204(d). Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. * * *

Sec. 206. Any price schedule establishing a maximum price or maximum prices, issued by the Administrator of the Office of Price Administration or the Administrator of the Office of Price Administration and Civilian Supply, prior to the date upon which the Administrator provided for by section 201 of this Act takes office, shall, from such date, have the same effect as if issued under section 2 of this Act until such price schedule is superseded by action taken pursuant to such section 2. Such price schedules shall be consistent with the standards contained in section 2 and the limitations contained in section 3 of this Act, and shall be subject to protest and review as provided in section 203 and section 204 of this Act. All such price schedules shall be reprinted in the Federal Register within ten days after the date upon which such Administrator takes office.